IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE SIDE

CRIMINAL APPLICATION NO.5423 OF 2004

Mr. Chandrashekhar Rajkumar Gupta and Ors....Applicants

Versus

State of Maharashtra ....Respondents

Mr. Shirish Gupte, Sr. Advocate with Mr.Subodh Desai for Applicants

Mrs.M.M.Deshmukh, APP for Respondents

WITH

CRIMINAL WRIT PETITION NO.2210 OF 2004

Mr. Ravi Narayanrao Raut s/o

Narayanrao Manaji Raut .. ..Petitioner

Versus

The State of Maharashtra ..Respondents

Mr. A.M. Saraogi for Petitioner

Mr. S.R.Borulkar, PP for Respondents

WITH

CRIMINAL WRIT PETITION NO.2211 OF 2004

Mr. Munendrakumar Singh s/o
Ramchandra Singh .. ..Petitioner

Versus

The State of Maharashtra .. ..Respondents

Mr. A.M.Saraogi for Petitioner
Mr. S.R.Borulkar, PP for Respondents

WITH

WRIT PETITION NO.2077 OF 2004

Mr. Maheshkumar Jaganprasad Agarwal ..Petitioner

Versus

The State of Maharashtra .. ..Respondents

Mr. A.M.Saraogi for petitioner
Mr. S.R.Borulkar, PP for Respondents

CORAM : S.C.DHARMADHIKARI,J.

DATE : 13TH NOVEMBER, 2006

P.C. :

1. Heard both sides. Perused the Petitions and the annexures thereto so also the reply affidavit. These Criminal Writ Petitions along with Criminal Application were placed for admission together, as common facts are involved. They were heard together and are disposed of by this common order.

2. The Criminal Writ Petitions and the Applications are filed by the Contractor and the employees of the Indian Railways, who have been named as accused in RCC No.212 of 2004 which is pending before the Learned Judicial Magistrate, First Class, Railway Court, Kalyan.

3. In this criminal case, the accused are charged with commission of offences punishable under Sections 304A, 337, 338, 427 r/w 34 of the Indian Penal Code and Sections 151 and 175 of the Railways Act. The petitioners invoke the jurisdiction of this Court under Section 482 of Criminal Procedure Code. The relief claimed is quashing of the charge-sheet filed in the above criminal case.

4. It is contended by Shri Gupte, learned Senior Counsel appearing for Petitioners, in Criminal Application No.5434 of 2004, that under Section 119 of the Railways Act, 1989 and Rule 23 of Appendix XV no enquiry, investigation etc. could be proceeded with, if commission of enquiry is appointed under the Commissioners of Enquiry Act, 1952. He submits that in the present case even Rule 23, which is reproduced on page 15 of the Petition would apply. He submits that the word "investigation" appearing in Section 119 of the Railways Act, would include the proceedings under Cr.P.C. He submits that the commission of enquiry was appointed under the Act. Once such an enquiry was under way, there is no question of any investigation being commenced and completed under the Criminal Procedure Code by the Police Machinery. Consequently, the charge-sheet could not have been laid in the regular criminal case. Therefore, on this short ground alone, the charge-sheet must be quashed by this court under its inherent powers.

5. Without prejudice to the above, it is contended that the entire investigation commenced by the police was uncalled for and unnecessary. It is contended that the

matter is highly technical in the light of the accident, which has occurred on the relevant date. Opinion and Report by Experts and technically qualified and competent persons is necessary. All such persons would participate in the commission of enquiry. It is after taking into consideration all relevant aspects and opinion of such experts that the commission would submit its final report. The Police machinery should have awaited submission of such final report and thereafter decided upon its course of action. Today, during the pendency of the proceedings before the commission of enquiry, allowing criminal proceedings to go on would be an abuse of the process of the court. Therefore, the criminal proceedings be stayed till the conclusion of the proceedings before the commission of enquiry.

6. Without prejudice to the above submissions, it is contended by Shri Gupte that reading the charge-sheet as a whole, it would be clear that no offence is disclosed as far as the applicants in Criminal Application No.5423 of 2004. He submits that the applicants are contractors, who have submitted their tenders. The tender work involved extension of platform of Dombivli Railway Station and extension, modification and construction of Foot-over

Bridges (FOBs), buildings in between Dombivli and Thakurli Stations and other miscellaneous works. The tender was awarded to M/s. Maharashtra Steel Fabricator, Thane. The Applicant Nos.1 and 2 are partners of this firm. The Applicant Nos.3 and 4 are working as Supervisors at the site. It is the submission of Shri Gupte that the tender work was to be carried out by the applicants strictly on the basis of the designs and drawings supplied by the Railways. The work was to be carried out under day to day supervision of the officers and technical persons deputed by the Railways. Thus, the work is merely of erection. The work of conception, designing and preparation of drawings is not to be done by the applicants. They would be handed over a design and drawing duly approved by the Railway Authorities and the work has to be completed in accordance therewith. Thus, the concept of the FOB was not designed by the applicants, but by the Railway Authorities. The statements recorded of the concerned persons including experts, would show that the accident occurred because of faulty design. The applicants could not have been arrayed as accused once they have not designed the project. There is no fault or deficiency in the service rendered by the applicants as contractors. The construction work is not found to be defective. In

such circumstances, there is no offence committed by the applicants. Shri Gupte in this behalf invited my attention to the statements recorded during the course of the investigation and the provisional findings of the Commission of Railway Safety Enquiry. He has also invited my attention to the reports of IIT and VJTI. He submits that no negligence of whatsoever nature is attributed to the Applicants in the accident. The bridge has not collapsed on account of any acts attributed to the applicants. Therefore, Section 304A of Indian Penal Code is inapplicable. Once this section is inapplicable, provisions of Indian Penal Code and the Railways Act, also, would not apply. Even on the materials collected by the prosecution till date and taking them at their face value, the charge sheet filed pursuant thereto does not disclose any offence as against the applicants. The Application under Section 482 therefore be allowed by quashing all proceedings as far as the applicants are concerned.

7. Shri Saraogi, who is appearing for Petitioners in other Petitions, while adopting the arguments of Shri Gupte submits that there cannot be second enquiry when there is Commission of Enquiry appointed by the Railways.

He has invited my attention to the enquiry report and has submitted that the employees of the railways who are petitioners before me are in no way responsible for the accident. He submits that the accident has occurred on account of a faulty design. The Petitioners are not responsible for preparation of designs and drawings. Their duties are supervisory in nature. Therefore, there is no question of they being guilty in any manner. The Petitioners are railway officers. He has invited my attention to the Accident Manual. He has also invited my attention to the report of experts from VJTI. He has also taken me through the charge-sheet. He contended that the prosecution itself has come with the case that the accident occurred on account of faulty design. In such circumstances, there is no question of the petitioners being in any manner guilty of the offences alleged. He has invited my attention to the Railway Manual. He submits that the Head Office prepares the design. It is the head office, which awards the contracts, therefore, the defect in the design is not something with which the petitioners can be connected. Consequently, the proceedings against the petitioners are an abuse of the process of the court. If the petitioners are made to go through the trial, irreparable harm and prejudice will be

caused to them. In any event, no useful purpose will be served once the prosecution itself has blamed the design for the accident. For all these reasons, the application/Petitions be allowed is the submission of Shri Saraogi.

8. With the assistance of the learned Senior Counsel for the Applicants and Shri Saraogi, so also the learned APP, I have perused the Petitions, the annexures thereto and the affidavit filed by the Investigating Officer. This court has directed the I.O. to take instructions on a specific point. The I.O. has filed an affidavit clarifying the position that similar design was used by the Railway Authorities for a Foot Over-board Bridge at Bhopal and the said bridge has been functioning for past more than 100 years. The present design is also approved after site verification and is similar to that of the one at Bhopal. Therefore, it is not that the Bridge collapsed only because of defective design. The I.O. in his affidavit states thus :-

> "3. I state that the Chief Engineer (Construction, Central Railway) stated in his statement recorded on 6.4.2004 that Mr. M.K.

Aggarwal was appointed as Executive Engineer. Mr. M.K. Singh, Bridge Inspector, Mr. R.N. Raut was Section Engineer and the construction was given to the Contractor Mr. Chandrashekhar Gupta and other Maha. Steel Fabricator, Thane and as per the Contract, entered into the Contractor, the foundation and fabrication were to be carried out in the presence and as per the direction of the Engineers of the railways and Mr. R.M. Raut being Section Engineer was supposed to supervise the work in order to see whether the work is carried out as per the plan sanctioned by the Railways and as per the instructions given by the Railways. Mr. Sharma further stated that Bridge Inspector M. K. Singh was required to supervise that the construction proceeds strictly as per the design and also to check the Steel, angles, racket, beams, arms as per the drawings and pursuant to the requirements. Mr. M.K.Aggarwal was Executive Engineer and he was also supposed to check that construction and fabrication were going on as per the design by the Railways and he was also supposed to remain present on the site. I state that after registration of the said FIR, I

have taken over the investigation and statements of various witnesses were recorded and after completion of investigation, I have filed a charge sheet.

5. I state that from the perusal of the investigation papers, the fact of collapse of the bridge and 4 persons having dead and 12 injured cannot be denied. I state that based on various reports although, it is tried to suggest that the design was defective, however, there is no positive report produced by the accused obtained from any of the authority to come to the positive conclusion that design was defective which was led for collapsing the bridge. I state that on the contrary during the course of investigation, it was revealed that the railway authorities has used similar design for the foot over bridge at Bhopal which is existing for more than 100 years and the authorities after cite verification has approved the said design for the present site and therefore, it cannot be said that the said bridge collapsed due to defective design."

9. It is not disputed before me that on 2.1.2004 a Suburban Local Train left Kalyan at 10.42 Hrs. It passed through Thakurli on Up-Through line. At about 10.45 Hrs. while the train was approaching Dombivli Station, the Foot Over Bridge under construction and more particularly described in the charge-sheet fell on one coach of the train. It got entangled in Motor Coach No.70471 CR, which is second coach from the Motorman's cabin. Due to this fall and entangling, there was a breakage of contact and catenary wire of the OHE of all the four lines. The OHE tripped. The FOB was dragged for about 130 Mtrs. by the moving train before it came to a halt. At the relevant time, twelve labourers, including one Senior Section Engineer were working on the FOB. As the FOB collapsed on the train, the staff working on the bridge also came down with it. Four Labourers working on the FOB died. Due to the collapse eight persons were grievously hurt and three persons received simple injuries. The cost of damage was calculated tentatively at Rs.28 Lacs.

. Shri Dilip Gavar, Police Sub-Inspector, Railway Police was on duty at Dombivli Railway Station. He witnessed the incident from Platform. He informed the Dombivli Railway Police. His statement was treated as FIR

and registered by Dombivli Railway Police Station on 2.1.2004 as CR No.1/2004. The gist of the allegations in the FIR is that the FOB which was under construction was being constructed by using sub-standard material and because of the same it collapsed. The FIR alleged that Chandrashekhar Rajkumar Gupta along with one Rajan Avasthy, who was a supervisor and one Habib Shifaras Ansari who was the Mukadam along with the concerned Railway Staff, Engineers and officers used sub-standard material and equipment to construct the FOB. They failed to provide any safety measures thereon. Therefore, they are guilty for the offences mentioned above.

10. The investigation commenced leading to the arrest of the applicants before me. The Investigating Agency recorded statement of about 34 witnesses which comprised of the injured victims, train passengers, the railway staff which included Chief Engineer (Construction) North Central Railway, other Engineers and staff of the Design Department. The Respondents called for the Technical Test Report of VJTI, Mumbai and also called upon the VJTI to submit their report in connection with the collapse of FOB. The Respondents further called upon the Kalyan-Dombivli Municipal Corporation to submit their

report in respect of the collapse of FOB.

11. It is true that the materials collected by the Investigating Agency and the data collected by Commission of Railway Safety is part of the charge sheet, but, in my view, at this stage, it would not be proper for me to enter into respective versions on merits.

12. I cannot proceed on the basis that the accident has occurred only because of the faulty design, as contended by the learned Counsel for the Petitioners. The materials which are collected during the course of the investigation are yet to be exhibited on record of the Regular criminal case. Today, the charge-sheet is filed. All further proceedings are stayed by an ad-interim order passed by this Court in these Petitions. It is not as if the materials which are collected during the course of the investigation have been admitted in evidence. The documents which are sought to be relied upon including reports of experts have to be placed on record of the criminal case in accordance with law.

13. It is pertinent to note that the petitioners before me have not disputed that the Foot Over Bridge was

under construction. They do not dispute that the accident occurred when the construction work was in progress. They do not dispute that the FOB collapsed on a running train, thereby resulting in loss of lives and injuries. Apart from the monetary loss, human lives too are lost in the accident. Therefore, at this stage, it would not be safe to hold that faulty design alone was responsible for the accident. There would be several reasons leading to the accident and may be, faulty design, is one of them. However, at this stage, it cannot be conclusively said that the accident has occurred because of the design being faulty. Ultimately, the cause of accident as highlighted before me is based upon the opinion of the experts in the field. The Petitioners would have ample opportunity to examine the experts and highlight the report once the same is taken on record in the criminal case. At this stage, when the experts have not been summoned as witnesses nor their report is taken on record in accordance with law, it would not be proper to hold that the petitioners were in no way responsible for the accident by relying on the same.

14. The principles which are laid down by the decisions of the Hon’ble Supreme Court for quashing of

prosecution under Section 482 of Criminal Procedure Code, are well settled. The inherent powers have to be exercised sparingly and with great care and caution, while interfering with a trial to be held pursuant to filing of the charge-sheet in a criminal case. In **AIR 2006 SC page 2872 (Central Bureau of Investigation vs. Ravi Shankar Srivastava)** the Supreme Court observes thus:-

> " 8. In R.P.Kapur v. State of Punjab (AIR 1960 SC 866) this Court summarized some categories of cases where inherent power can and should be exercised to quash the proceedings.
>
> (I) Where it manifestly appears that there is a legal bar against the institution or continuance e.g. want of sanction;
>
> (ii) where the allegations in the first information report or complaint taken at its face value and accepted in their entirely do not constitute the offence alleged;
>
> (iii) where the allegations constitute an

offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly falls to prove the charge.

9. In dealing with the last case, it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge. Judicial process should not be an instrument of oppression, or, needless harassment. Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, less it would be an instrument in the hands of a private complainant to unleash

vendetta to harass any person needlessly. At the same time the section is not an instrument handed over to an accused to short circuit a prosecution and bring about its sudden death....."

15. In exercise of my inherent powers, I would be in error in straightway accepting the report and suggestions. Whenever such an accident or incident occurs the normal scenario is that each one tries to blame the other. The Petitioners who are contractors and employees of Railways cannot straightway avoid their liability and responsibility is the plea raised by the prosecution. It is not as if by the charge-sheet being filed that they are held guilty and conviction would follow. By referring to the documents filed along with the charge-sheet, the Petitioners cannot call upon this court to exercise its inherent powers and that too by entering into the merits of the case. Apart from the provisions of the Indian Penal Code the Petitioners are also being proceeded for offences under The Railways Act.

16. The scope of the contract awarded to the Petitioner/Applicant in criminal Application No.5423 of 2004 and the role played by the officers who are

petitioners in other petitions, will have to be gone into in the course of trial. It would always be open for the petitioners to invite the attention of the trial court to the opinion of experts and the conclusion recorded during the course of the enquiry. Merely because at some place, while recording their opinion, the said experts and the enquiry officer have spoken about the designs being faulty, it is not as if the applicants cannot be proceeded with in criminal law. The charge sheet will have to be read as a whole and not in bits and pieces. So read at least at this prima facie stage, it can safely be concluded that the same discloses commission of offences under the Indian Penal Code and Railways Act. The Investigating Officer has in para 5 of the affidavit specifically contended that a suggestion is made that the accident occurred on account of defective designs but apart from relying upon documents forming part of the charge-sheet nothing has been produced to record a positive conclusion of this nature. The FOB of similar design is functional, according to the I.O., therefore, it is not on account of faulty drawings and designs that the accident had occurred. Thus, he disputes the position as highlighted by the Petitioners. Ultimately, the FOB under construction having collapsed, all concerned can be

proceeded in a criminal court and when a charge-sheet is filed, it would not be proper to scuttle the progress of the criminal case. Thus, I find no case being made for exercising the inherent jurisdiction of this Court.

17. The faint suggestion that once the Railway Authorities appoint a Commission of Enquiry and launch a investigation, all other investigation even under the criminal law must come to an end is devoid of any substance to say the least. Reliance in that behalf is placed on Section 119 of the Railways Act which reads thus:-

> " 119. **No inquiry, investigation, etc., to be made if the Commissioner of Inquiry is appointed.**___ Notwithstanding anything contained in the foregoing provisions of this Chapter, where a Commission of Inquiry is appointed under the Commission of Inquiry Act, 1952 (3 of 1952), to inquire into an accident, any inquiry, investigation or other proceeding pending in relation to that accident shall not be proceeded with, an all records or other documents relating to such inquiry shall be forwarded to such

> authority as may be specified by the Central Government in this behalf."

A bare perusal of the same would demonstrate that the said provision falling in Chapter XII under heading "Accidents" speaks about a commission of enquiry appointed under the Commissioners of Enquiry Act, 1952. Thus, Enquiry by Railway Administration cannot be proceeded with once a Commission of Enquiry has been appointed under the Commission of Enquiry Act, 1952. Both, Shri Gupte and Shri Saraogi have failed to point out to me anything either in this provision or otherwise, which demonstrates that an investigation by police under the criminal procedure is prohibited under the Railways Act. The Commission of Enquiry and investigation by police so also enquiry and trial by a criminal court are distinct matters and there being no prohibition for enquiry and investigation under criminal law it is not possible to accede to the submission of Shri Gupte and Shri Saraogi that the criminal case cannot be proceeded with.

18. These are the only contentions which are raised before me and I have dealt with them.

19. Since notice was directed to be issued upon these petitions and they were to be listed for final disposal, I permitted parties to make their submissions by referring to the charge-sheet and even allowed the Investigation Officer to answer the queries raised by this court by filing an affidavit. Taking an over all view of the matter and considering that the case is at the stage framing of charges, in my view, the inherent powers of this Court need not be exercised. The Petitions and Application therefore stand dismissed.

20. At this stage Mr.Gupte and Mr. Saraogi prayed for continuation of the ad-interim order for a period of six weeks. The request is opposed by the learned APP. Since the ad-interim order has been in force from 2004, interest of justice would be subserved if the same is continued by a period of six weeks.

(S.C.Dharmadhikari, J.)